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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1956

No. 49

JOSE SORIANO, PETITIONER,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

PETITION FOR CERTIORARI FILED MARCH 12, 1956

CERTIORARI GRANTED APRIL 30, 1956

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 49

JOSE SORIANO, PETITIONER,

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THE UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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—406-9

[fol. 1] **IN THE UNITED STATES COURT OF CLAIMS**

No. 50127

JOSE SORIANO

v.

THE UNITED STATES

PETITION—Filed April 26, 1951

To the Honorable the Court of Claims:

The plaintiff, Jose Soriano, respectfully represents:

I. That plaintiff is of legal age, a citizen of the Republic of the Philippines, married, with residence and postal address at La Castellana, Negros Occidental, Philippines;

II. That under the laws of the Republic of the Philippines, citizens of the United States can bring suits in the Courts of the Philippines against the Republic of the Philippines on express or implied contracts;

[fol. 2] III. That pursuant to authority of the Philippine Independence Act (Act 17 January, 1933, as amended) and Sec. 12 of the Ordinance appended to the Philippine Constitution, the Philippine Army was called and ordered into the service of the armed forces of the United States by Military Order of the Commander-in-Chief, dated 26 July 1941;

IV. That after the fall of Bataan and Corregidor in 1942, elements of the United States Army Forces in the Far East, known in short as "USAFFE", refused to surrender to the military forces of the Imperial Japanese Government, which Government was then the enemy of the United States of America, (which we hereinafter refer to as the Enemy) and fled to the hills where they banded and organized themselves into guerrilla units and continued to wage military operations against the Enemy in accordance with the express or implied authority of the Commander-in-Chief of the United States Army Forces Southwest Pacific Area until the liberation of the Philippines from the military control of the Enemy by the armed forces of the United States of America;

V. That among the guerrilla units thus organized was the 1st Bn., 76th Infantry Regiment, 72nd Division, 7th Military District in the island of Negros, Philippines, which unit continuously conducted military operations against the Enemy in accordance with the express or implied authority of the Commander-in-Chief of the United States Army Forces Southwest Pacific Area;

VI. That in order successfully to prosecute military operations against the Enemy and in accordance with the Rules of Land Warfare published by the United States War [fol. 3] Department and/or in accordance with the express or implied authority of the Commander-in-Chief of the United States Army Forces Southwest Pacific Area aforesaid guerrilla unit, through its authorized officers, requisitioned, commandeered, and otherwise legally procured foodstuff and food supplies, equipment, goods and merchandise from various persons;

VII. That the plaintiff, at various times, from September, 1942 to January, 1945 delivered to aforesaid guerilla unit through its authorized officers various quantities and description of foodstuffs and food supplies, equipment, goods, and merchandise, the then reasonable market value of which equaled or exceeded the total amount of Two Hundred Thirty Nine Thousand and Five Hundred Thirty One Pesos and Fifty Centavos (₱239,531.50) currency of the Republic of the Philippines or One Hundred Nineteen Thousand Seven Hundred Sixty-Five Dollars and Seventy-Five Cents ($119,765.75), United States currency, that an itemized statement showing kind, quantity, and value of these various foodstuffs and food supplies, equipment, goods other merchandise commandeered, the dates of the various commandeerings and the names of the various authorized commandeering officers is attached to and made a part of this petition and is marked Exhibit "A";

VIII. That at the time the various foodstuffs and food supplies, equipment, goods and merchandise in Exhibit "A" were commandeered corresponding receipts were issued to the plaintiff and it was clearly understood and [fol. 4] agreed at the time of such commandeering that a legal obligation to pay was created thereby and that payment would eventually be made by the U. S. Army of which said unit was an authorized element;

IX. That plaintiff has not been paid for the above-mentioned foodstuffs and food supplies, equipment, goods and merchandise;

X. That plaintiff filed a claim for payment of the commandeered property mentioned in Exhibit "A" with the Claims Service of the U. S. Army on March 30, 1948 which claim was, however, denied on June 21, 1948; that pursuant to the request of the said Claims Service of the U. S. Army, the original receipts referred to in paragraph VIII were turned over to said Claims Service, which has declined to return them to the plaintiff; that the reason of the disapproval by said Claims Service to pay plaintiff's claim was because the evidence on file was insufficient to establish the validity of the claim to warrant payment; that the said claim bears the file number G-7-194, 785-CG-91 in the U. S. Army Headquarters Philippine-Ryukyus Command, Office of the Chief of Claims Service;

XI. That there has been no assignment or transfer of this claim or any part thereof and that the plaintiff is justly entitled to recover from the defendant the amount of One Hundred Nineteen Thousand Seven Hundred Sixty-Five Dollars and Seventy-Five Cents ($119,765.75), U. S. currency; that there are no credits or set-offs thereto;

[fol. 5] XII. That the plaintiff did not at any time and in any way voluntarily aid or give encouragement to the enemies of the United States and that at the time the commandeerings were made the plaintiff owed and bore true allegiance to the United States; that at the present time plaintiff owes allegiance to the Republic of the Philippines;

XIII. That the plaintiff's right to recovery is based on implied contracts arising from the acts of commandeering or on the receipts issued in consequence thereof;

XIV. That among the laws authorizing the contract and recovery are the Fifth Amendment to the Constitution of the United States of America; the Act of October 16, 1941 c. 445, 55 Stat. 742; the First War Powers Act (The Act of December 18, 1941) c. 593, 55 Stat. 838; Executive Orders 9001; the Confirmation and Clarification of the Authority of Theater Commanders as explained in Circular No. 53 of February 21, 1945 of the U. S. War Department and the Inherent Powers of Theater Commanders; the

Rules of Land Warfare; and other regulations of the U. S. War Department;

XV. That plaintiff, at the time of the claim against the defendant first accrued, was living in the Philippines and remained there from that time throughout the entire occupation of the Islands by the Japanese military forces during all of which period the American courts were inaccessible to him; that plaintiff since the time the claim first accrued up to the present has never gone, resided or done business in the United States.

[fol. 6] XVI. That the plaintiff believes the above facts to be true.

Wherefore, it is respectfuly prayed that this Honorable Court render judgment in favor of the plaintiff in the sum of One Hundred Nineteen Thousand Seven Hundred Sixty-Five Dollars and Seventy-Five Cents ($119,765.75), U. S. currency, plus interest from March 30, 1948 and grant such other and further relief as may be just and equitable in the premises.

Jose Soriano, By Frederic P. Lee, Attorney, Lee, Toomey & Kent, 1200 18th Street, N. W., Washington 6, D. C.

Of Counsel: Gibbs, Gibbs, Chuidian & Quasha, Suite 207, Singson Building, Plaza Moraga, Manila, Philippines.

[fol. 7]

EXHIBIT "A" TO PETITION

SUMMARY OF ACCOUNT

Claimant: DR. JOSE SORIANA

Date	*Commandeering Officer*	*Quantity*	*Items Commandeered*	*Unit Price*	*Total Price*
2 Dec. '42	Pfc. R. Catolico	265	cavans palay	₱10.00	₱2650.00
-do-	-do-	10	cavans polished rice	23.00	230.00
-do-	-do-	6	heads cattle	180.00	1080.00
-do-	-do-	5	carabaos	200.00	1000.00
-do-	-do-	1	horse	250.00	250.00
-do-	-do-	25	cavans corn	6.00	150.00
-do-	-do-	6	sacks camote	10.00	60.00
-do-	-do-	6	sawales (amakan)	10.00	60.00
14 Dec. '42	-do-	500	pcs bangos	2.00	1000.00
-do-	-do-	268	cavans palay	10.00	2680.00
-do-	-do-	5	carabaos	200.00	1000.00
-do-	-do-	6	cows	200.00	1200.00
-do-	-do-	24	cavans corn	7.00	168.00
-do-	-do-	15	sacks camote	10.00	150.00
16 Dec. '42	-do-	1	sack camote	10.00	10.00
-do-	-do-	2	chairs	50.00	100.00
-do-	-do-	3	carabaos	200.00	600.00
-do-	-do-	175	cavans palay	10.00	1750.00
28 Dec. '42	-do-	2	batteries 6 volts	50.00	100.00
-do-	-do-	1	can kerosene (cock)	40.00	40.00
-do-	-do-	1	bat. charger 6 volts	170.00	170.00
-do-	-do-	120	cavans palay	10.00	1200.00
-do-	-do-	2	bull carts	120.00	240.00
-do-	-do-	4	cows	180.00	720.00
-do-	-do-	5	carabaos	200.00	1000.00
2 Jan. '42	-do-	150	cavans palay	10.00	1500.00
-do-	-do-	3	cows	180.00	540.00
-do-	-do-	4	carabaos	200.00	800.00
4 Jan. '42	-do-	74	cavans palay	10.00	740.00
-do-	-do-	10	cavans polished rice	20.00	200.00
-do-	-do-	8	cavans corn	6.00	48.00
-do-	-do-	7	sacks camotes	10.00	70.00
-do-	-do-	6	cattles	200.00	1200.00
-do-	-do-	2	carabaos	200.00	400.00
					₱23,106.00
28 Nov. '42	Sgt. P. Rojo	300	cavans palay	10.00	3000.00
-do-	-do-	6	cows	100.00	600.00
5 Feb. '43	-do-	200	cavans palay	10.00	2000.00
-do-	-do-	2	carabaos	200.00	400.00
25 Nov. '42	-do-	1500	pcs bangos (fresh)	1.50	2250.00
-do-	-do-	200	pcs kikilo	1.00	200.00
2 Feb. '43	-do-	1000	pcs bangos	1.50	1500.00
-do-	-do-	10	gantas shrimps	4.00	40.00
4 Apr. '43	-do-	1300	pcs bangos	1.50	950.00
-do-	-do-	500	pcs shrimps (locon)	1.00	500.00
-do-	-do-	800	cavans palay	12.00	9600.00
7 Apr. '43	-do-	6	carabaos	200.00	1200.00
25 Apr. '43	-do-	600	cavans palay	12.00	7700.00
25 -do-	-do-	1000	pcs bangos	1.50	1500.00
					31,940.00

[fol. 7]

EXHIBIT "A" TO PETITION

SUMMARY OF ACCOUNT

Claimant: DR. JOSE SORIANO

Date	*Commandeering Officer*	*Quantity*	*Items Commandeered*	*Unit Price*	*Total Price*
24 Feb. '43	Lt. M. Isada	700	cavans palay	15.00	10,500.00
-do-	-do-	5	heads of cow	150.00	750.00
18 Mar. '43	-do-	500	cavans palay	15.00	7500.00
-do-	-do-	4	heads carabaos	200.00	800.00
3 Jan. '43	-do-	2500	pcs dried bangos	1.50	3750.00
-do-	-do-	3000	shrimps (big size)	1.00	3000.00
				Total—	₱26,300.00
19 Mar. '43	Lt. M. Isada	2	sacks camote	₱10.00	₱ 20.00
-do-	-do-	3	hds. cows	150.00	450.00
-do-	-do-	3	bunches bananas	5.00	15.00
-do-	-do-	11	pcs. Jackfruit	1.00	11.00
5 Mar. '43	-do-	300	cavans palay	12.00	3600.00
-do-	-do-	3	hds. cows	150.00	450.00
-do-	-do-	20	sacks sugar	50.00	1000.00
2 Feb. '43	-do-	800	pcs. bangos	2.00	1600.00
-do-	-do-	60	pcs. bamboos	2.00	120.00
-do-	-do-	15	pcs. crabs	1.00	15.00
-do-	-do-	3	gts. shrimps	10.00	30.00
19 Jan. '43	-do-	750	bangos	1.50	1125.00
-do-	-do-	50	pcs. crabs	2.00	100.00
-do-	-do-	100	cavans palay	12.00	1200.00
				Total—	₱ 9,736.00
24 Nov. '42	Sgt. M. Deocadiz	500	ears corn	.05	25.00
-do-	-do-	469	pcs. bangos	1.50	853.50
-do-	-do-	16	gts. shrimps	5.00	80.00
-do-	-do-	267	cavans palay	10.00	2670.00
-do-	-do-	5	hds. carabaos	200.00	1000.00
-do-	-do-	3	hds. cows	100.00	300.00
3 Feb. '43	-do-	217	cavans palay	12.00	3604.00
-do-	-do-	13	cavans rice	30.00	390.00
-do-	-do-	23	cavans corn	15.00	345.00
-do-	-do-	2	bull carts	50.00	100.00
-do-	-do-	5	hds. carabaos	200.00	1000.00
-do-	-do-	2	hds. cows	100.00	200.00
29 Nov. '42	-do-	6	hds. carabaos	200.00	1200.00
-do-	-do-	2	hds. cattles	100.00	200.00
-do-	-do-	185	cavans palay	12.00	2220.00
-do-	-do-	12	cavans rice	30.00	360.00
-do-	-do-	30	cavans corn	15.00	450.00
-do-	-do-	3	bull carts	50.00	150.00
				Total—	₱15,147.50
5 Mar. '43	Pfc. P. Catolico	260	cavans palay	8.00	2080.00
-do-	-do-	4	hds. carabaos	200.00	800.00
-do-	-do-	2	tables	150.00	300.00
-do-	-do-	6	chairs	30.00	180.00
1 Mar. '43	-do-	4	chairs	40.00	160.00

EXHIBIT "A" TO PETITION

SUMMARY OF ACCOUNT

Claimant: DR. JOSE SORIANO

Date	*Commandeering Officer*	*Quantity*	*Items Commandeered*	*Unit Price*	*Total Price*
-do-	-do-	1	table	150.00	150.00
-do-	-do-	1	bull cart	450.00	450.00
-do-	-do-	1	head carabao	350.00	350.00
3 Feb. '43	-do-	4	heads cows	270.00	1080.00
-do-	-do-	7	heads carabaos	350.00	2450.00
				Total—	₱ 8,000.00
fol. 9]					
Aug '44	Lt. F. Gareza	500	cavans palay	12.00	6000.00
-do-	-do-	3	heads carabaos	250.00	750.00
1 Sep. '44	-do-	100	cavans palay	12.00	1200.00
-do-	-do-	2	heads cows	200.00	400.00
9 Mar '44	-do-	2	heads cows	200.00	400.00
7 Oct. '44	-do-	400	cavans palay	12.00	4800.00
-do-	-do-	2	heads cows	150.00	300.00
8 May '44	-do-	200	cavans palay	12.00	2400.00
-do-	-do-	1	head cow	150.00	150.00
Apr. '44	-do-	500	cavans palay	12.00	6000.00
Feb. '44	-do-	700	cavans palay	12.00	8400.00
-do-	-do-	2	heads cows	150.00	300.00
				Total—	₱31,600.00
3 June '44	Lt. F. Gareza	390	cavans palay	12.00	4680.00
-do-	-do-	1	head cow	150.00	150.00
				Total—	₱35,930.00
5 Apr. '43	Pfc. S. Rojo Jr.	200	cavans dried fish	25.00	500.00
-do-	-do-	10000	pcs dried fish	.10	1000.00
-do-	-do-	5000	pcs dried fish	.10	500.00
				Total—	₱ 2,000.00
15 Dec. '42	Lt. P Dy	2	heads carabaos	200.00	400.00
-do-	-do-	27	cavans palay	6.00	162.00
12 Dec. '42	-do-	1	head carabao	200.00	200.00
29 Nov. '42	-do-	2	heads carabaos	200.00	400.00
17 Mar. '43	-do-	1	cavan palay	6.00	6.00
9 Dec. '42	-do-	1	cavan palay	6.00	6.00
1 Oct. '43	-do-	1	adding machine	180.00	180.00
10 Aug. '43	-do-	297	gantas palay	6.00/cav.	72.00
12 Mar. '43	-do-	1	cow	150.00	150.00
21 Nov. '42	-do-	3	cavans palay	6.00	18.00
10 Mar. '43	-do-	8	cavans palay	6.00	48.00
4 Nov. '42	-do-	15	cavans palay	6.00	90.00
6 Nov. '42	-do-	2	cavans palay	6.00	12.00
8 Nov. '42	-do-	6	cavans palay	6.00	36.00
13 Dec. '42	-do-	44	cavans palay	6.00	264.00
9 Sep. '43	-do-	1	cow	150.00	150.00
16 Sep. '43	-do-	1	cow	150.00	150.00
24 Sep. '43	-do-	1	cow	150.00	150.00
8 Oct. '43	-do-	1	cow	150.00	150.00

EXHIBIT "A" TO PETITION

SUMMARY OF ACCOUNT

Claimant: DR. JOSE SORIANO

Date	*Commandeering Officer*	*Quantity*	*Items Commandeered*	*Unit Price*	*Total Price*
27 Oct. '43	-do-	1	carabao	200.00	200.00
13 Dec. '42	-do-	5	cavans palay	6.00	30.00
11 Dec. '42	-do-	10½	cavans palay	6.00	63.00
18 Dec. '42	-do-	125	gantas palay	6.00/cav.	30.00
14 Dec. '42	-do-	170	gantas palay	6.00/cav.	42.00
16 Dec. '42	-do-	3	cavans palay	6.00	18.00
15 Dec. '42	-do-	200	gantas palay	6.00/cav.	48.00
29 Nov. '42	-do-	2	heads carabaos	200.00	400.00
27 Nov. '42	-do-	3	cavans palay	6.00	18.00
20 Sep. '43	-do-	67	cavans palay	8.00	536.00
30 Sep. '43	-do-	5	cavans palay	6.00	30.00
22 Nov. '42	-do-	1	cavans palay	6.00	6.00
27 Nov. '42	-do-	3	cavans palay	6.00	18.00
31 Nov. '42	-do-	3 cavs & 18 gts	palay	6.00/cav.	22.00
[fol. 10]					
30 Dec. '42	-do-	2	heads cow	150.00	300.00
-do-	-do-	3	heads carabaos	200.00	600.00
11 Mar. '43	-do-	4	cavans palay	7.00	28.00
16 Jan. '43	-do-	3	cows	180.00	540.00
21 May '43	-do-	8	heads carabaos	220.00	1760.00
14 Jan. '43	-do-	1	typewriter	250.00	250.00
9 Nov. '42	-do-	9	cavans palay	6.00	54.00
4 Feb. '43	-do-	174	cavans palay	8.00	1392.00
-do-	-do-	1	cow	180.00	180.00
13 Jan. '43	-do-	2	cavans palay	6.00	12.00
11 Mar. '43	-do-	6	cavans palay	6.00	36.00
20 May '43	-do-	1	radio	300.00	300.00
				Total—	₱ 9,557.00
14 Dec. '44	Lt F Gareza	3	heads cows	220.00	660.00
16 Oct. '44	-do-	1	head cow	220.00	220.00
20 Dec. '42	-do-	300	cavans palay	7.00	2100.00
-do-	-do-	2	heads cows	150.00	300.00
17 June '43	-do-	300	cavans palay	8.00	2400.00
-do-	-do-	2	heads cows	200.00	400.00
-do-	-do-	3	rolls barb wire	40.00	120.00
3 July '43	-do-	3	heads cows	150.00	450.00
-do-	-do-	1	pig	100.00	100.00
2 Mar. '44	-do-	250	cavans palay	10.00	2500.00
-do-	-do-	3	heads cows	220.00	660.00
8 Dec. '42	-do-	250	cavans palay	7.00	1750.00
-do-	-do-	4	cows	150.00	600.00
-do-	-do-	100	pcs empty sacks	1.50	150.00
-do-	-do-	10	piculs sugar	20.00	200.00
7 Aug. '43	-do-	5	heads cows	180.00	540.00
-do-	-do-	3	heads carabaos	200.00	600.00
2 Feb. '43	-do-	4	heads cattle	180.00	720.00
-do-	-do-	2	cans kerosene	35.00	70.00
30 Aug. '43	-do-	7	heads cattle	180.00	1260.00
-do-	-do-	1	head carabao	200.00	200.00
12 Sept. '44	-do-	2	cows	220.00	440.00
-do-	-do-	3	carabaos	250.00	750.00
-do-	-do-	1	radio set (6 tubes)	250.00	250.00

EXHIBIT "A" TO PETITION

SUMMARY OF ACCOUNT

Claimant: DR. JOSE SORIANO

Date	*Commandeering Officer*	*Quantity*	*Items Commandeered*	*Unit Price*	*Total Price*
9 Apr. '44	-do-	200	cavans palay	10.00	2000.00
13 Aug. '44	-do-	2	heads cows	220.00	440.00
5 June '44	-do-	3	heads cows	220.00	660.00
20 Jan. '43	-do-	2	heads cows	180.00	360.00
-do-	-do-	400	cavans palay	7.00	2800.00
13 Sep. '43	-do-	3	heads cows	220.00	660.00
-do-	-do-	1	head carabao	250.00	250.00
10 Feb. '43	-do-	40	cavans palay	7.00	280.00
4 Dec. '43	-do-	700	cavans palay	8.00	5600.00
-do-	-do-	2	heads cows	200.00	400.00
30 Jan. '43	-do-	8	heads cattle	180.00	1440.00
7 Jan. '43	-do-	4	cows	180.00	720.00
-do-	-do-	2	telephone boxes	30.00	60.00
-do-	-do-	3	rolls wire	20.00	60.00
15 Oct. '43	-do-	400	cavans palay	10.00	4000.00
-do-	-do-	3	cattles	200.00	600.00
				Total—	₱37,770.00
[fol. 11-12]					
3 Dec. '42	Lt F Gareza	500	cavans palay	7.00	3500.00
-do-	-do-	3	heads cattles	180.00	540.00
-do-	-do-	3	piculs sugar	20.00	60.00
9 Oct. '43	-do-	2	cattles	220.00	440.00
-do-	-do-	1	carabao	250.00	250.00
6 July '44	-do-	300	cavans palay	10.00	3000.00
-do-	-do-	1	carabao	250.00	250.00
2 Aug. '44	-do-	250	cavans palay	10.00	2500.00
-do-	-do-	1	cow	220.00	220.00
2 Jan. '43	-do-	600	cavans palay	7.00	4200.00
-do-	-do-	50	empty sacks	1.50	75.00
-do-	-do-	1	RCA radio	300.00	300.00
-do-	-do-	1	battery 6 volts	40.00	40.00
-do-	-do-	2	heads cows	180.00	360.00
				Total—	₱15,735.00
3 Dec. '42	Lt F Gareza	400	cavans palay	7.00	2800.00
-do-	-do-	4	cows	180.00	720.00
6 Jan. '44	-do-	600	cavans palay	10.00	6000.00
17 Jan. '44	-do-	6	cows	220.00	1320.00
-do-	-do-	1	carabao	250.00	250.00
26 Jan. '43	-do-	300	cavans palay	7.00	2100.00
-do-	-do-	3	carabaos	200.00	600.00
16 Feb. '43	-do-	6	heads cattles	200.00	1200.00
2 Mar. '44	-do-	3	cows	220.00	660.00
-do-	-do-	1	carabao	250.00	250.00
30 Sep. '44	-do-	450	cavans palay	10.00	4500.00
11 Nov. '44	-do-	180	cavans palay	10.00	1800.00
6 Dec. '44	-do-	400	cavans palay	10.00	4000.00
-do-	-do-	2	cows	220.00	440.00
-do-	-do-	1	carabao	250.00	250.00
19 Jan. '45	-do-	400	cavans palay	10.00	4000.00
-do-	-do-	1	carabao	250.00	250.00
				Total—	₱46,875.00

Summary of Different Totals

Items	Commandeered by	Pfc R Catolico from 2 Jan '42 up to 28 Dec '42	₱ 23,106.00
"	"	Sgt P Rojo from 25 Nov '42 up to 25 Apr '43	31,940.00
"	"	Lt M Isada from 3 Jan '43 up to 18 Mar '43	26,300.00
"	"	" " " " 19 Jan '43 up to 19 Mar '43	9,736.00
"	"	Sgt N Deocadiz from 24 Nov '42 up to 3 Feb '43	15,147.50
"	"	Pfc P Catolico from 13 Feb '43 up to 15 Mar '43	8,000.00
"	"	Lt F Gareza from 30 Aug '44 up to 3 June '44	35,930.00
"	"	Pfc S Rojo Jr on 4 April '43	2,000.00
"	"	Lt P Dy from 30 Sep. '42 up to 21 May '43	9,557.00
"	"	Lt F Gareza from 5 June '43 up to 20 Dec '44	37,770.00
"	"	" " " " 3 Dec '42 up to 30 Sep '44	46,875.00
			₱239,531.50

GRAND TOTAL . . . . ₱239,531.50

[fol. 13] IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

DEFENDANT'S ANSWER—Filed May 26, 1952

For its answer to plaintiff's petition, defendant

1. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph I of the petition.

2. Admits all of the allegations contained in par-graphs II and III of the petition.

3. Admits that after the fall of Bataan and Corregidor in 1942 and the surrender of all United States Armed Forces and Philippine Army Forces, some individuals and groups of individuals who had served with the United States Armed Forces escaped the military forces of the Imperial Japanese Government, which was then in control of the Philippine Islands, and fled to the hills where they subsequently carried on harassing operations against the Japanese Imperial Forces as a part of the resistance move-
[fol. 14] ment against the Japanese then being conducted in the Philippines, which resistance continued until the liberation of the Philippines, but denies the remaining allegations contained in paragraph IV of the petition.

4. Denies all the allegations in paragraph V of the petition, except that defendant alleges that the 1st Bn. 76th Inf. Reg. 7th Military District, Negros Island, was one of the guerrilla units in the resistance movement referred to in paragraph 3 hereof, which unit, on August 12, 1947, was retroactively recognized as of November 17, 1942, as an

element of the Philippine Army pursuant to President Osmena's Executive Order No. 21 of October 1944.

5. Denies the allegations contained in paragraphs VI, VII, and VIII of the petition.

6. Admits the allegations contained in paragraph IX of the petition.

7. Denies the allegations contained in paragraph X of the petition, except that defendant admits that the claim bears file No. G-7-194,785. Defendant alleges that plaintiff, through an attorney in fact, filed a claim for payment of the property listed in Exhibit A, with certain minor variations, with the Claims Service of the United States Army on March 31, 1948, which claim was initially denied on June 21, 1948; that plaintiff voluntarily attached the receipts to his claim form; that on July 20, 1948, plaintiff's attorney-in-fact filed a request for reconsideration, which request was denied on June 21, 1949.

[fol. 15] 8. Denies knowledge or information sufficient to form a belief as to the allegation contained in paragraph XI of the petition, save that it specifically denies that plaintiff is entitled to recover $119,765.75, or any other amount.

9. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph XII of the petition.

10. Asserts that the allegations contained in paragraphs XIII and XIV are conclusions of law which require no answer, but if they be deemed to be allegations of material fact, they are denied.

11. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph XV of the petition.

As a first affirmative defense to plaintiff's cause of action:

12. On or about March 31, 1948, plaintiff, through an attorney-in-fact, filed a claim with the Army Claims Service, Philippine Islands, to which he attached receipts in support thereof, for the amount of ₱239,531.50 ($119,765.75) for supplies delivered to and used by the 7th Military District's recognized guerrillas, which claim is the same claim in this case.

13. In the aforesaid claim, plaintiff's attorney-in-fact, who defendant alleges upon information and belief was

plaintiff's son-in-law, stated under oath that the property was delivered to and used by the said guerrilla unit.

[fol. 16] 14. The aforesaid claim was supported by false and fraudulent receipts bearing the signature of one Felix Gareza, the said receipts being those referred to in Exhibit A, pages 10-11, of plaintiff's petition, as items alleged to have been commandeered by Lt. F. Gareza.

15. The plaintiff, through a duly authorized agent, knowingly and deliberately filed the claim in an attempt to defraud the United States, and has corruptly practiced or has attempted to practice fraud against the United States in violation of the Act of March 3, 1941, 36 Stat. 1141, Title 28 U.S.C. 2514, and by reason thereof said claim has been forfeited to the United States.

As a second affirmative defense to plaintiff's cause of action:

16. Defendant alleges that plaintiff's cause of action, if any, is against the Philippine Government inasmuch as the alleged requisitioning was done by members of the 7th Military District Guerillas, said guerrillas being retroactively recognized as elements of the Philippine Army under the provisions of President Osmena's Executive Order No. 21, and that accordingly this Court has no jurisdiction to hear plaintiff's claim as the claim is not one against the United States.

As a third affirmative defense to plaintiff's cause of action:

17. Defendant alleges that the action was not commenced within six years after the accrual of the claims, if any, set [fols. 17-18] forth in the petition and that they are barred by the statute of limitations, 28 U.S.C. 2501.

Wherefore, defendant prays that the petition be dismissed and that the Court specifically find that the plaintiff practiced or attempted to practice fraud against the United States in violation of the provisions of the Act of March 3, 1911, 36 Stat. 1141, 28 U.S.C. 2514, and render judgment of forfeiture, as required by law.

Respectfully submitted, Holmes Baldridge, Assistant Attorney General, Thomas O. Fleming, Attorney for Defendant.

[fol. 19] IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

REPLY—Filed September 4, 1952

For reply to defendant's first affirmative defense plaintiff admits, denies, and alleges as follows:

I. Admits the allegations of paragraph 12, except he alleges that his claim was filed on or about March 30, 1948, and that the original receipts supporting the claim were turned over to the Claims Service at its request.

II. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 13, for the reason that the document referred to is not in his possession.

[fol. 20] III. Denies the allegation contained in paragraph 14 that the claim was supported by false and fraudulent receipts, and denies knowledge or information sufficient to form a belief as to the other allegations contained in paragraph 14, for the reason that the documents referred to are not in his possession.

IV. Asserts that the allegations contained in paragraph 15 are conclusions of law which require no answer; but if they be deemed in whole or in part allegations of material fact they are denied.

Wherefore, it is prayed that the affirmative relief prayed for by respondent in his answer be denied.

Frederick P. Lee, Lee, Toomey & Kent, 1200 18th Street, N. W., Washington 6, D. C., Attorney for Plaintiff.

Of Counsel: Gibbs & Chuidian, Singson Building, Manila, Philippines.

[fol. 21] IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS—
Filed August 8, 1955

Without waiving any defenses previously asserted in this action, including specifically the plea of fraud, defendant moves that the petition herein be dismissed on the ground that plaintiff's cause of action, if any, is against the Republic of the Philippines and not against the United States. In support of this motion, defendant submits the attached memorandum.

Defendant's Memorandum in Support of Its Motion for Judgment on the Pleadings

This is an action to recover the value of certain foodstuffs and supplies allegedly furnished by plaintiff to the members of a guerrilla unit in the Philippines.

Defendant admits that the 1st Battalion, 76th Infantry Regiment, 72nd Division, 7th Military District, Negros Island, Philippines, was recognized by the United States Army on August 12, 1947, as having been an element of the Philippine Army, from November 17, 1942. Answer, [fol. 22] par. 4). Plaintiff alleges that at various times from September, 1942 to January, 1945 he delivered to the aforesaid 1st Battalion, 76th Infantry Regiment, through its authorized officers, various quantities of foodstuffs and supplies, and that the then reasonable market value of which equalled or exceeded the total amount of ₱239,531.50 in terms of Republic of the Philippines currency or $119,765.75 in terms of United States currency; that at the time the various foodstuffs and supplies were commandeered, corresponding receipts were issued to the plaintiff and it was clearly understood and agreed at the time of such commandeering that a legal obligation to pay was created thereby and that payment would eventually be made by the United States Army; and that plaintiff has not been paid for the above mentioned foodstuffs and supplies.

Argument

This Court has held that members of guerrilla units, whether those units were recognized or not, never became members of the Army of the United States, "nor were they authorized to bind the United States in any respect." *Logronio* v. *United States,* C. Cls. No. 354-54, decided July 12, 1955. Assuming the truth of plaintiff's allegations that he furnished foodstuffs and supplies to a guerilla unit, plaintiff's right of action, if any, is against the Republic of the Philippines and not against the United States. *Logronio* v. *United States, supra, Bardoquillo* v. *United States,* C. Cls. No. 599-52, decided July 12, 1955.

Conclusion

For the reason set forth above, the Court is without jurisdiction to entertain the action, and defendant is entitled [fol. 23] to have the petition dismissed and costs taxed against the plaintiff as provided by law.

Respectfully submitted, Geo. S. Leonard, Acting Assistant Attorney General, Civil Division.

Walter Kiechel, Jr., Alfred H. O. Boudreau, Jr., Attorneys, Civil Division, Department of Justice.

[fol. 24] ARGUMENT AND SUBMISSION OF CASE

On December 5, 1955, the case was argued and submitted on defendant's motion for judgment on the pleadings, by Mr. Walter Kiechel, Jr. for the defendant and by Mr. Prew Savoy for the plaintiff.

[fols. 25-26] IN THE UNITED STATES COURT OF CLAIMS

No. 50127

JOSE SORIANO

v.

THE UNITED STATES

ORDER OF THE COURT ON DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS—December 16, 1955

This case comes before the court on defendant's motion for judgment on the pleadings urging dismissal of plaintiff's

petition on the authority of the decision in *Logronio v. The United States,* No. 354-54, decided July 12, 1955, and, upon consideration thereof,

It is ordered this sixteenth day of December, 1955, that defendant's motion for judgment on the pleadings be and the same hereby is granted and plaintiff's petition is dismissed.

By the Court (S.) Benjamin H. Littleton, Acting Chief Judge.

[fol. 27] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 28] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed April 30, 1956

The petition herein for a writ of certiorari to the United States Court of Claims is granted, and the case is transferred to the summary calendar. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(406-9)